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FAYTHE NESS

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ORGANOGENESIS INC.,

Plaintiff,

vs.

FAYTHE NESS,

Defendant.

Case No. 2:16-CV-00989-GMN-CWH

**[REDACTED] STIPULATED FINAL
JUDGMENT AND PERMANENT
INJUNCTION**

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

This matter comes before the Court on Plaintiff ORGANOGENESIS INC.'s (hereinafter "Plaintiff" or "Organogenesis") Complaint and Emergency Motion for Temporary Restraining Order and Motion for Preliminary Injunction against Defendant FAYTHE NESS ("Defendant" or "Ness").

I. CASE BACKGROUND AND COURSE OF PROCEEDINGS

On May 3, 2016, Plaintiff applied to this Court for an Emergency Motion for Temporary Restraining Order [ECF No. 8] and Motion for Preliminary Injunction [ECF No. 9]. That same day, the Court entered an Order on Plaintiff's Emergency Motion for Temporary Restraining Order keeping it in place until the hearing on the Motion for Preliminary Injunction, which the Court set for Monday, May 23, 2016. [ECF No. 10]. On May 13, 2016, Defendant filed her Response to the Motion for Preliminary Injunction. [ECF No. 19]. Plaintiff filed its Reply on May 18, 2016. [ECF No. 22].

1 On May 23, 2016, at the scheduled hearing, the Court heard oral arguments on the Motion
2 for Preliminary Injunction and took the matter under submission. [ECF No. 23]. On May 24, 2016,
3 the Court issued an Order granting Plaintiff's Motion for Preliminary Injunction and entered the
4 following Order:

5 1. Defendant Ness shall not, within her former Organogenesis sales territory,
6 participate as a salesperson or employee of any other business, firm or corporation
7 which is, or by her action would become, competitive with the Business of
8 Organogenesis, including MiMedx; and

9 2. Defendant Ness, on her own concert with others, shall not attempt to interfere
10 with or entice away any Organogenesis customer within her former Organogenesis
11 sales territory.

12 For the purposes of this Order, the "Business of Organogenesis" shall mean the
13 research, development, biological engineering work, technical and clinical feasibility
14 investigations (conducted or contemplated), governmental, fabricated, packaged, sold,
15 distributed, licensed, offered or contemplated to be offer for sale or license by
16 Organogenesis in the field of tissue regeneration, including living and non-living
17 tissue and organ replacement and repair constructs, related to the fields of wound
18 repair, bio-surgery, and bio-aesthetics, including but not limited to: (a) living dermal
equivalents, living epidermal equivalents, living skin equivalents, wound coverings
and wound management products; (b) living connective tissue constructs and
biomaterial constructs for the repair and/or replacement tendon, ligament, body-wall,
cardiac tissue, vasculature, bone, cartilage, neural tissue; (c) injectable matrix
compositions, injectable cell compositions, topical compositions containing
cytokines, growth factors, and other cellcommunication compounds; (d) natural and
synthesized collagen compositions, and natural and synthesized extracellular matrix
compositions; (e) cell culture medial for culturing cells and living constructs; (f) stem
cells; and (g) cell-delivery constructs.

19 **ECF No. 24, at pp.10-11.**

20 Also on May 24, 2016, Defendant filed her Answer to Defendant's Complaint. [ECF No.
21 25]. On June 8, 2016, Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule of Court 26-
22 1(d), the parties conducted a meeting to discuss the relevant issues for discovery, possible early
23 resolution of the matter, and other pertinent issues. Pursuant to that meeting and follow up
24 discussions and negotiations, the parties have reached a resolution of this action, to be effectuated in
25 part pursuant to the terms of a Stipulated Permanent Injunction. The resolution of this action
26 between the parties is contingent upon entry by the Court of this Final Judgment and Permanent
27 Injunction.

28 ///

1 ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
2 FOLLOWS:

3 **II. CONSENT PERMANENT INJUNCTION**

4 1. For a period of twelve (12) months from May 3, 2016, Defendant Ness is hereby
5 enjoined and prohibited from marketing or selling products that are competitive with the products
6 she was responsible to market or sell during her employment with Organogenesis (*i.e.* Apligraf®,
7 Dermagraft®, and PuraPly™) in her former Organogenesis sales territory. For the purposes of this
8 Order, Defendant Ness's former Organogenesis sales territory consists of the municipalities listed in
9 the attached Exhibit A.

10 2. For a period of twelve (12) months from May 3, 2016, Defendant Ness, on her own or
11 in concert with others, shall not attempt to interfere with or entice away any Organogenesis customer
12 within her former Organogenesis sales territory.

13 3. Notwithstanding the foregoing, Defendant Ness is permitted to market and sell
14 AmnioFix® on behalf of MiMedx Group, Inc.

15 4. Defendant Ness is further permitted to sell EpiBurn™ at burn care centers provided
16 that such activities would not require her to have contact with any customers or potential customers
17 of Organogenesis with whom Ness had contact during her employment with Organogenesis or
18 whom may use PuraPly™ in other areas of their practice.

19 5. Defendant Ness is further enjoined from disseminating, publishing, disclosing, using
20 for her own benefit or the benefit of others, or divulging or conveying to others, any trade secrets of
21 Organogenesis.

22 6. Defendant Ness shall not use, disclose or disseminate any confidential or proprietary
23 information she had access to at Organogenesis, such as customer information or information
24 otherwise described in the confidentiality obligations set forth in her Confidentiality and Non-
25 Solicitation Agreement.

26 7. Defendant Ness is further enjoined and prohibited from removing, altering, erasing,
27 deleting, or destroying any evidence, or potential evidence relevant to the instant litigation.

28 8. This Order shall remain in place as a permanent injunction.

1 **III. DISMISSAL**

2 Subject to Section II of this Order, the Parties have stipulated to the dismissal with prejudice
3 of all Organogenesis' claims against Ness asserted in this action, provided that the Court approves
4 and enters this Order as submitted by the Parties. Having approved this Order, it is hereby
5 ORDERED that Organogenesis' claims against Ness alleged in this action are dismissed with
6 prejudice, subject to section V below.

7 **IV. EFFECTIVE DATE**

8 The effective date of this Order shall be the date upon which it is entered by the Court.

9 **V. RETENTION OF JURISDICTION**

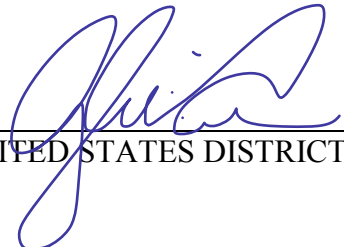
10 This Court shall retain jurisdiction over this case and the Parties for the purposes of resolving
11 any disputes arising under this Order, entering orders modifying this Order, or effectuating or
12 enforcing compliance with the terms of this Order. Violations of this Order may be punishable as a
13 contempt of Court. The Court shall retain jurisdiction over any injunctions in this Order until such
14 injunctions expire by their own respective terms.

15 **VI. FINAL JUDGMENT**

16 Upon approval and entry of this Order, this Order shall constitute the final judgment in this
17 action regarding the claims by Organogenesis against Ness.

18 **IT IS SO ORDERED.**

19 DATED: This 1 day of August, 2016.

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22 _____
23 UNITED STATES DISTRICT COURT JUDGE
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1 Dated: July 28, 2016

2 Respectfully submitted,

Respectfully submitted,

3 /s/ Doreen Spears, Esq.

/s/ Kathryn B. Blakey, Esq.

4 DOREEN SPEARS, ESQ.

BRUCE YOUNG, ESQ.

5 LAURA J. THALACKER, ESQ.

KATHRYN B. BLAKEY, ESQ.

HARTWELL THALACKER, LTD.

LITTLER MENDELSON, P.C.

6 Attorneys for Plaintiff
7 ORGANOGENESIS INC.

Attorneys for Defendants
FAYTHE NESS

8 Respectfully submitted,

9 /s/ Christopher S. Fuedo, Esq.

10 CHRISTOPHER S. FEUDO, ESQ.

FOLEY HOAG LLP

11 Attorneys for Plaintiff
12 ORGANOGENESIS INC.

13 Firmwide:141659456.1 089186.1001
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EXHIBIT A

ZIP Code	City	State Name	ST Abbrev
84710	ALTON	UTAH	UT
84714	BERYL	UTAH	UT
84719	BRIAN HEAD	UTAH	UT
84720	CEDAR CITY	UTAH	UT
84721	CEDAR CITY	UTAH	UT
84722	CENTRAL	UTAH	UT
84725	ENTERPRISE	UTAH	UT
84729	GLENDALE	UTAH	UT
84733	GUNLOCK	UTAH	UT
84735	HATCH	UTAH	UT
84737	HURRICANE	UTAH	UT
84738	IVINS	UTAH	UT
84742	KANARRAVILLE	UTAH	UT
84745	LA VERKIN	UTAH	UT
84746	LEEDS	UTAH	UT
84753	MODENA	UTAH	UT
84755	MOUNT CARMEL	UTAH	UT
84756	NEWCASTLE	UTAH	UT
84757	NEW HARMONY	UTAH	UT
84758	ORDERVILLE	UTAH	UT
84759	PANGUITCH	UTAH	UT
84760	PARAGONAH	UTAH	UT
84761	PAROWAN	UTAH	UT
84762	DUCK CREEK VILLAGE	UTAH	UT
84763	ROCKVILLE	UTAH	UT
84765	SANTA CLARA	UTAH	UT
84767	SPRINGDALE	UTAH	UT
84770	SAINT GEORGE	UTAH	UT
84771	SAINT GEORGE	UTAH	UT
84772	SUMMIT	UTAH	UT
84774	TOQUERVILLE	UTAH	UT
84779	VIRGIN	UTAH	UT
84780	WASHINGTON	UTAH	UT
84781	PINE VALLEY	UTAH	UT
84782	VEYO	UTAH	UT
84783	DAMMERON VALLEY	UTAH	UT
84784	HILDALE	UTAH	UT
84790	SAINT GEORGE	UTAH	UT
84791	SAINT GEORGE	UTAH	UT
85325	BOUSE	ARIZONA	AZ
85328	CIBOLA	ARIZONA	AZ
85334	EHRENBERG	ARIZONA	AZ
85344	PARKER	ARIZONA	AZ
85346	QUARTZSITE	ARIZONA	AZ
85348	SALOME	ARIZONA	AZ
85357	WENDEN	ARIZONA	AZ

85359	QUARTZSITE	ARIZONA	AZ
85360	WIKIEUP	ARIZONA	AZ
85371	POSTON	ARIZONA	AZ
86401	KINGMAN	ARIZONA	AZ
86402	KINGMAN	ARIZONA	AZ
86403	LAKE HAVASU CITY	ARIZONA	AZ
86404	LAKE HAVASU CITY	ARIZONA	AZ
86405	LAKE HAVASU CITY	ARIZONA	AZ
86406	LAKE HAVASU CITY	ARIZONA	AZ
86409	KINGMAN	ARIZONA	AZ
86412	HUALAPAI	ARIZONA	AZ
86413	GOLDEN VALLEY	ARIZONA	AZ
86426	FORT MOHAVE	ARIZONA	AZ
86427	FORT MOHAVE	ARIZONA	AZ
86429	BULLHEAD CITY	ARIZONA	AZ
86430	BULLHEAD CITY	ARIZONA	AZ
86431	CHLORIDE	ARIZONA	AZ
86433	OATMAN	ARIZONA	AZ
86436	TOPOCK	ARIZONA	AZ
86437	VALENTINE	ARIZONA	AZ
86438	YUCCA	ARIZONA	AZ
86439	BULLHEAD CITY	ARIZONA	AZ
86440	MOHAVE VALLEY	ARIZONA	AZ
86441	DOLAN SPRINGS	ARIZONA	AZ
86442	BULLHEAD CITY	ARIZONA	AZ
86443	TEMPLE BAR MARINA	ARIZONA	AZ
86444	MEADVIEW	ARIZONA	AZ
86445	WILLOW BEACH	ARIZONA	AZ
86446	MOHAVE VALLEY	ARIZONA	AZ
88901	THE LAKES	NEVADA	NV
88905	THE LAKES	NEVADA	NV
89001	ALAMO	NEVADA	NV
89002	HENDERSON	NEVADA	NV
89003	BEATTY	NEVADA	NV
89004	BLUE DIAMOND	NEVADA	NV
89005	BOULDER CITY	NEVADA	NV
89006	BOULDER CITY	NEVADA	NV
89007	BUNKERVILLE	NEVADA	NV
89008	CALIENTE	NEVADA	NV
89009	HENDERSON	NEVADA	NV
89010	DYER	NEVADA	NV
89011	HENDERSON	NEVADA	NV
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89013	GOLDFIELD	NEVADA	NV
89014	HENDERSON	NEVADA	NV
89015	HENDERSON	NEVADA	NV
89016	HENDERSON	NEVADA	NV

89017	HIKO	NEVADA	NV
89018	INDIAN SPRINGS	NEVADA	NV
89019	JEAN	NEVADA	NV
89020	AMARGOSA VALLEY	NEVADA	NV
89021	LOGANDALE	NEVADA	NV
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89023	MERCURY	NEVADA	NV
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89037	COYOTE SPRINGS	NEVADA	NV
89039	CAL NEV ARI	NEVADA	NV
89040	OVERTON	NEVADA	NV
89041	PAHRUMP	NEVADA	NV
89042	PANACA	NEVADA	NV
89043	PIOCHE	NEVADA	NV
89044	HENDERSON	NEVADA	NV
89045	ROUND MOUNTAIN	NEVADA	NV
89046	SEARCHLIGHT	NEVADA	NV
89047	SILVERPEAK	NEVADA	NV
89048	PAHRUMP	NEVADA	NV
89049	TONOPAH	NEVADA	NV
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89185	LAS VEGAS	NEVADA	NV
89191	NELLIS AFB	NEVADA	NV
89193	LAS VEGAS	NEVADA	NV
89195	LAS VEGAS	NEVADA	NV
89199	LAS VEGAS	NEVADA	NV
89301	ELY	NEVADA	NV
89310	AUSTIN	NEVADA	NV
89311	BAKER	NEVADA	NV
89314	DUCKWATER	NEVADA	NV
89315	EAST ELY	NEVADA	NV
89316	EUREKA	NEVADA	NV
89317	LUND	NEVADA	NV
89318	MC GILL	NEVADA	NV
89319	RUTH	NEVADA	NV
89404	DENIO	NEVADA	NV
89405	EMPIRE	NEVADA	NV
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89408	FERNLEY	NEVADA	NV
89409	GABBS	NEVADA	NV
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89414	GOLCONDA	NEVADA	NV

89415	HAWTHORNE	NEVADA	NV
89418	IMLAY	NEVADA	NV
89419	LOVELOCK	NEVADA	NV
89420	LUNING	NEVADA	NV
89421	MC DERMITT	NEVADA	NV
89422	MINA	NEVADA	NV
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89438	VALMY	NEVADA	NV
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89815	SPRING CREEK	NEVADA	NV
89820	BATTLE MOUNTAIN	NEVADA	NV
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89822	CARLIN	NEVADA	NV
89823	DEETH	NEVADA	NV
89824	HALLECK	NEVADA	NV
89828	LAMOILLE	NEVADA	NV
89830	MONTELLO	NEVADA	NV
89833	RUBY VALLEY	NEVADA	NV
89834	TUSCARORA	NEVADA	NV
89835	WELLS	NEVADA	NV
89883	WEST WENDOVER	NEVADA	NV